IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL ACTION NO. 1:07-cv-231

C. BURGESS,

Plaintiff,

vs.

EFORCE MEDIA, INC.; IWIZARD HOLDING, INC.; ADKNOWLEDGE, INC.; BASEBALL EXPRESS, INC.; ALLEN-EDMONDS SHOE CORPORATION; INTERSEARCH GROUP, INC.; TRUSCO MANUFACTURING COMPANY; PRICEGRABBER.COM, INC.; SHOPZILLA, INC.; DAZADI, INC.; SIX THREE ZERO ENTERPRISES, LLC,

Defendants.

DEFENDANT iWIZARD HOLDING, INC.'S MOTION TO DISMISS

NOW COMES the Defendant, iWizard Holding, Inc., by and through the undersigned counsel, prior to answering the Complaint of the Plaintiff, and hereby moves to dismiss the Plaintiff's action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. In support of this Motion, the undersigned counsel shows unto the Court as follows:

1. The Plaintiff filed the present action against this Defendant alleging that this Defendant violated the CAN-SPAM Act by repeatedly sending emails to the Plaintiff.

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2. The federal CAN-SPAM Act, 15 U.S.C. § 7701 *et seq.* controls the instant dispute because the CAN-SPAM Act explicitly preempts state law.

3. The Plaintiff lacks standing to bring a private cause of action under the CAN-SPAM Act against this Defendant.

4. To the extent the Complaint seeks punitive damages against this Defendant, the Plaintiff has failed to state a claim upon which relief can be granted since he failed to plead any facts demonstrating the requisite aggravating factors of fraud, malice, or willful or wanton conduct.

WHEREFORE, the Defendant, iWizard Holding, Inc., respectfully requests that the Plaintiff's action against this Defendant be dismissed for failure to state a claim upon which relief can be granted.

THIS the 20th day of July, 2007.

ROBERTS & STEVENS, P.A.

s/ Jacqueline D. Grant

JACQUELINE D. GRANT (NC #22079)
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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed a copy of the foregoing ***DEFENDANT iWIZARD HOLDING, INC.'S MOTION TO DISMISS*** with the Clerk of Court using the ECF system that will send notification thereof to the following:

Kenneth R. Raynor	ken@templetonraynor.com
Keith H. Johnson	kjohnson@poynerspruill.com
Judy Thompson	jthompson@poynerspruill.com
Deborah T. Crowder	dcrowder@poynerspruill.com
Brian Heslin	brianheslin@mvalaw.com
Jennifer F. Revelle	jrevelle@rbh.com
Mary Euler	meuler@mwbavl.com

I further certify that I have served a copy of the foregoing ***DEFENDANT iWIZARD HOLDING, INC.'S MOTION TO DISMISS*** on the Plaintiff by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to:

C. Burgess
P.O. Box 6355
Hendersonville, NC 28793

THIS the 20th day of July, 2007.

s/ Jacqueline D. Grant

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